

Appl. No. 10/666,392
Amdt. Dated January 26, 2005
Reply to Office action of December 15, 2004

~~The nut is striated with brown black lines. None of the progeny have yet produced fruit, so it is not known at this time whether this trait is inheritable or affected by the parent tree's current growing conditions.~~

Please replace the paragraph beginning at page 6, line 19, with the following rewritten paragraph:

The following is a detailed description of my new variety of Willow Oak with color terminology in accordance with the Royal Horticulture Society (RHS) colour ~~color~~ chart, except where the context indicates a term having its ordinary dictionary meaning. My new tree has not been observed under all growing conditions, and variations may occur as a result of different growing conditions. All the progeny of my new variety, insofar as has been observed, have been identical in all of the characteristics described below.

REMARKS/ARGUMENTS

Claim 1 is currently pending in this plant patent application. The claim was rejected by the Examiner under 35 USC § 112, first and second paragraphs as not being supported by a clear and complete botanical description of the Applicant's Willow Oak tree named 'RT3'.

In her Office action, the Examiner raised four grounds of rejection, to wit:

A. Applicant had not specifically described how his new variety differed from related cultivars.

By the amendment to the Industry Representation portion of his application, Applicant has distinguished his Willow Oak tree from other cultivars, and particularly Hightower® and Wynstar® Willow Oaks. As set forth in this section, Applicant indicates that his 'RT3' Willow Oak is significantly narrower (a height-to-width ratio of 2.06, compared to 1.61 for a Hightower® Willow Oak, and 1.22 for a Wynstar® Willow Oak) than other known willow oak cultivars or seedlings. Also, branches on his tree emerge at 20°-30° angles from the trunk (compared with 50° for the Hightower® Willow Oak and 30° for the Wynstar® Willow Oak) and only flatten to 30°-40° angles from the trunk with age (compared with 80°-90° for both the Hightower® and Wynstar® Willow Oaks). Further, his tree has significantly denser branching than any other known seedlings and other seedlings or cultivars of Willow Oak have not displayed the growth habit of his 'RT3' Willow Oak. Also his caliper measurement, 4' above the ground, is larger than 50% of the other trees planted at the same time at the same time.

B. Applicant had not fully described the size, shape, and color of the fruit of his tree.

Applicant submits that revised section titled Fruit does now fully describe the size, shape, and color of the fruit of his tree.

C. Applicant had not clearly described how he discovered his willow tree.

Applicant submits that his revised section titled Discovery does now more clearly describe how his Willow Oak tree 'RT3' was discovered.

D. The word "color" on page 6 of the application should have been "colour".

The word "color" has been appropriately changed to "colour" in the appropriate paragraph.

Appl. No. 10/666,392
Amdt. Dated January 26, 2005
Reply to Office action of December 15, 2004

Based upon the foregoing, Applicant requests that the grounds of rejection be withdrawn, and that his application be allowed.

Respectfully submitted.

Dated: _____

1/26/05



J. Joseph Muller
Registration No. 28,450
Polster, Lieder, Woodruff & Lucchesi
12412 Powerscourt
St. Louis, Missouri 63141
Tel: (314) 238-2400
Fax: (314) 238-2401
Email: jmuller@patpro.com